

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:) DIVISION OF WATER
Christopher Ruppell) POLLUTION CONTROL
and) WPC CASE NO. 05-076D0
Dion Primiani) OGC CASE NO. 06-0257
Dba Fly Corporation)
Respondents) Docket # 04.30-094354A

AGREED ORDER

This matter came before the Tennessee Water Quality Control Board upon consent of the parties. After consideration of the Director's Order and Assessment, Respondent's Petition for Appeal, and the proposed Agreed Order of the parties, the Board made the following Findings of Fact and Conclusions of Law.

FACTS

I.

Christopher Ruppell (hereinafter the "Respondent Ruppell") is co-owner of Fly Motocross / ATV Fun Park located in Grainger County and **is the applicant on the Notice of Intent for coverage** under a Tennessee Construction General Permit. Service of process may be made on the Respondent at 1071 Ridgeview Road, Bean Station, Tennessee 37708.

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II.

Dion Primiani (hereinafter the "Respondent Primiani") is co-owner of Fly Motocross/ ATV Fun Park located in Grainger County. Service of process may be made on the Respondent Primiani at 4555 Enka Hwy., Morristown, TN 37813.

III.

The Respondents were attempting to develop a 30-acre motocross and ATV Fun Park at the base of Clinch Mountain near Bean Station in Grainger County (hereinafter the Site).

IV.

At the request of Respondents, Ruppell and Primiani, Division personnel made a site visit on February 7, 2005. Regulations regarding stream and wetland alterations, as well as construction storm water permitting, were discussed.

V.

On March 9, 2005, Division and U.S. Army Corps of Engineers (USACE) personnel made a follow up visit with the Respondents, the landowner, and their engineering consultants (Tysinger, Hampton, & Partners, Inc.), to review a wetland delineation submittal and to identify streams that were expected to be within the proposed work areas.

VI.

The Division issued a letter on March 17, 2005, summarizing the two aforementioned site visits and reminding the Respondents of their obligation to apply for coverage under TNCGP for construction storm water activities and for coverage under an Aquatic Resource Alteration Permit (ARAP) and/or a §401 Water Quality Certification before any alterations are conducted to on-site streams. The Division included a map highlighting the stream determinations made on-site.

VII.

Respondents submitted an incomplete Notice of Intent (NOI) for coverage under a TNCGP on May 4, 2005.

VIII.

The Division conducted a routine site inspection on August 3, 2005, and observed that erosion prevention and sediment controls (EPSCs) were non-existent and that several acres had been cleared and graded without coverage under a TNCGP. Five unauthorized road crossings of streams were observed and approximately 30 feet of channelization of a stream below a culvert was performed using a small bulldozer, which Respondent Ruppell admitted to operating. More than a foot of sediment accumulation was observed in several streams and wetland areas on site.

IX.

The Division issued a Notice of Violation (NOV) on August 10, 2005, that requested immediate implementation of EPSCs and attendance at a Compliance Review Meeting (CRM) scheduled for August 23, 2005.

X.

On August 23, 2005, a CRM was held by the Division and included representatives from USACE and the Respondents. Division personnel discussed the violations and requested that the Respondents implement and maintain EPSCs and submit a complete NOI for coverage under the TNCGP to be sent to the Knoxville Environmental Field Office within 7 days. Installation of EPSCs and stabilization of road crossings were to be completed by September 6, 2005.

XI.

On September 6, 2005, Division personnel conducted a follow up visit at the site and observed that EPSCs remained inadequate. The road crossings had

not been properly stabilized, and clearing and grading continued without coverage under the TNCGP. Sediment in the floodplain area was over 12 inches deep and additional sediment accumulations were observed in several tributaries on-site.

XII.

The Respondents have closed the facility and Respondent Ruppell has fully cooperated with the Division and the field office inspector throughout these proceedings. Respondents were lessees of the site and the site has now been conveyed by its owner to a development corporation. Site remediation work is complete and the site is currently in complete compliance with all applicable rules and regulations. The field office inspector has given the site his approval.

VIOLATIONS

XIII

By discharging materials to waters of the state without coverage under a valid permit, the Respondents have violated T.C.A. §69-3-108(b)(1) and §69-3-114(b), which state:

§69-3-108(b)(1) states:

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (6) The discharge of sewage, industrial wastes or other wastes into water, or a location from which it is likely that the discharged substance will move into waters;

§69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XIV.

By causing or allowing pollution of the waters of the state as described herein, the Respondent has violated T.C.A. §69-3-114(a), which states:

(a) It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

T.C.A. §69-3-103(22) provides:

(22) "Pollution" means such alteration of the physical, chemical, biological, bacteriological, or radiological properties of the waters of this state including but not limited to changes in temperature, taste, color, turbidity, or odor of the waters:

(A) As will result or will likely result in harm, potential harm or detriment of the public health, safety, or welfare;

- (B) As will result or will likely result in harm, potential harm or detriment of the health of animals, birds, fish or aquatic life;
- (C) As will render or will likely render the waters substantially less useful for domestic, municipal, industrial, recreational, or other reasonable uses; or
- (D) As will leave or will likely leave the waters in such condition as to violate any standards of water quality established by the board.

ORDER

XIV.

WHEREFORE PREMISES CONSIDERED, the Water Quality Control Board hereby orders that:

1. The Respondents shall hereafter comply with the Tennessee Water Quality Control Act and all division Rules.
2. The Respondents shall pay a civil penalty of SIX THOUSAND DOLLARS (\$6,000.00) to the Division in two (2) payments of Three Thousand Dollars (\$3000.00).
3. The first payment of \$3000.00 is due and payable by September 24, 2007. The second and final \$3000.00 payment is due and payable by November 10, 2007.
4. Payments shall be made to "State of Tennessee" and sent to the Tennessee Department of Environment and Conservation, Pollution Control, TDEC, 401 Church Street, L & C Annex 7th Floor, Nashville, Tennessee 37243.

5. The remainder of the assessed civil penalty NINETEEN THOUSAND DOLLARS (\$19,000.00), shall be waived, if and only if, the Respondent does not cause, suffer, allow, or permit subsequent violations of the same nature during the twenty-four (24) month period beginning with the date this Order is approved.

A) If the Respondent does cause, suffer, allow, or permit subsequent violations during the above twenty-four (24) month period specified above, the waived amount of NINETEEN THOUSAND DOLLARS (\$19,000.00) will be due and payable to the Division upon written notice from the Technical Secretary.

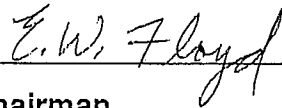
REASONS FOR DECISION

XVI.

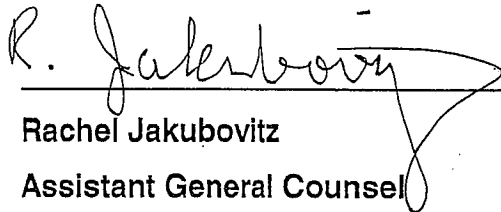
The above Findings of Facts and Conclusions of Law, and the Orders contained herein were made in an effort to provide a reasonable process to be followed to abate the issue's alleged in this matter. The Board encourages settling cases in the interest of avoiding the time and expense of prolonged litigation.

Adopted and approved by the majority of the Board, a quorum being present, on this 18 day of September, 2007.

FOR THE WATER POLLUTION CONTROL BOARD:


Chairman

APPROVED FOR ENTRY:


Rachel Jakubovitz
Assistant General Counsel

Tennessee Department of Environment and Conservation
L & C Tower, 20th Floor
401 Church Street.
Nashville, Tennessee 37243

Respondent

A copy of this Agreed Order shall be served upon Respondent by certified mail, return receipt requested. This Final Order shall become effective upon entry.

Filed and entered in the Administrative Procedures Division, Office of the Secretary of State on this 18 day of September, 2007.

Thomas Stovall

~~Charles C. Sullivan, II, Director~~ *Thomas Stovall*
Administrative Procedures Division

IX. RIGHTS OF APPEAL

Respondent is hereby notified and advised of its right to administrative and judicial review of this FINAL ORDER, pursuant to the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann §§ 4-5-316, 4-5-317 and 4-5-222 and the Hazardous Waste Management Act, Tenn. Code Ann. § 68-212-113.

Tenn. Code Ann. § 4-5-316 gives a party the right to submit to the Board a Petition for a Stay of Effectiveness of a FINAL ORDER within seven (7) days after its entry.

Tenn. Code Ann. § 4-5-317 gives any party the right to file a Petition for Reconsideration within ten (10) days after the entry of a FINAL ORDER, stating specific grounds upon which relief is requested.

Tenn. Code Ann. §§4-5-322 and 68-212-113 provide any party the right of judicial review by filing a Petition in the Chancery Court of Davidson County within sixty (60) days of this ORDER becoming effective. A copy of this FINAL ORDER shall be served upon the Respondent by certified mail, return receipt requested. This FINAL ORDER shall become effective upon entry.